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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE PRODUCTS
ANTITRUST LITIGATION

No. 3:10-md-2143 RS

JOINT STATEMENT

DATE ACTION FILED: Oct. 27, 2009

This Document Relates to:

ALL ACTIONS

1 In accordance with the Court's Order Denying Motions for Class Certification (Oct. 3, 2014)
2 (Dkt. No. 1444) ("Order"), the parties hereby submit jointly a report as to their respective positions
3 on how *In re Optical Disk Drive Prods. Antitrust Litigation* should proceed from the juncture at
4 which the Court issued its Order:

5 **A. Class Plaintiffs' Position**

6 Direct Purchaser Plaintiffs ("DPPs") and Indirect Purchaser Plaintiffs ("IPPs") separately,
7 filed petitions with the United States Court of Appeals for the Ninth Circuit seeking permission to
8 appeal the Order pursuant to Fed. R. Civ. P. 23(f) ("Petitions"), attached hereto as Exs. A and B
9 (without appendices). If the Ninth Circuit's past practice is indicative of the timing of its expected
10 decisions on the pending Petitions, DPPs and IPPs will know in a few months' time whether their
11 appeals will be taken. These decisions will significantly affect class plaintiffs' position on future
12 proceedings. DPPs and IPPs are also negotiating with all interested parties a protective order for the
13 production of certain FBI recordings made as part of the U.S. Department of Justice's investigation
14 of the ODD industry. Magistrate Judge Spero at a discovery hearing on October 17, 2014 made clear
15 that he would like the parties to resolve any disputes with respect to a supplemental protective order
16 concerning the tapes within two weeks, and the recordings produced. The recordings and the
17 verbatim transcripts thereof are likely probative evidence and also may affect the class plaintiffs'
18 position on how the ODD litigation should proceed. Given the short intervals of time until the
19 expected decision from the Ninth Circuit as well as entry of a protective order by Magistrate Judge
20 Spero, class plaintiffs request that the Court set a Case Management Conference for the end of
21 January. At that time the parties will be better informed to set forth a plan for the case to proceed.

22 **B. State of Florida's Position**

23 Florida agrees with the Class Plaintiffs' position.

24 **C. Defendants' Position**

25 In response to the Order, counsel for both the Direct and Indirect Purchaser Plaintiffs filed
26 Petitions under Fed. R. Civ. P. 23(f) asking the Ninth Circuit Court of Appeals to review the Court's
27 denial of their motions for class certification. Both Petitions reflect an effort to reargue Plaintiffs'
28

1 motions, and do not meet the narrow criteria and high standard required by the Ninth Circuit for
2 permitting interlocutory review under Rule 23(f). Defendants will be opposing the Petitions.

3 In the meantime, Defendants believe that other aspects of this litigation – which include the
4 claims of plaintiffs not subject to the petitions – should proceed while the petitions are pending and
5 regardless of their disposition. Thus, Defendants believe that the next order of business is to devise a
6 further case management order that provides cut-off dates for merits (i.e., non-expert) discovery,
7 submission of expert reports, and expert discovery, and a briefing schedule for summary judgment
8 motions. This has been done before in other multi-district antitrust actions in this District of similar
9 scope, and that experience can inform this process.

10 Defendants request that the Court provide the parties fourteen (14) days in which to confer
11 regarding deadlines and to present either a joint scheduling order or a further joint report setting forth
12 their respective proposed schedules for the remainder of this multi-district litigation. Defendants
13 disagree with Plaintiffs’ request for what amounts to an informal stay of any case management
14 deadlines until at least “the end of January.” This type of delay in the proceedings is inconsistent
15 with Rule 23(f), which provides that “[a]n appeal does not stay proceedings in the district court”
16 absent court order. However, if the Court is inclined to grant Plaintiffs’ request for an informal stay
17 until the end of January, then Defendants believe that *all* discovery should be formally stayed until
18 that time. It is burdensome, expensive and unfair for Defendants to be subject to limitless discovery
19 while Plaintiffs ask this Court to put off any case management deadlines or end-dates.¹

20 **D. Direct Action Plaintiffs’ Position**

21 Direct Action Plaintiffs (“DAPs”) agree that the case should continue to move forward with
22 motion practice and discovery. DAPs support Class Plaintiffs’ request for a Case Management
23 Conference at the end of January 2015, for the reasons set forth by the Class Plaintiffs, and request

24 ¹ Plaintiffs’ reference to the potential production of “FBI recordings” from DOJ’s grand jury
25 investigation is immaterial to this joint report. The parties have not reached any agreement on the
26 terms of a protective order governing those materials, which Judge Spero made a prerequisite to any
27 production, and resolution of that discovery issue does not support a three month stay of these
28 actions. In any event, Defendant TSSTK is presently reviewing Judge Spero’s October 17, 2014
ruling denying its Motion to Quash Plaintiffs’ Subpoena to DOJ for the production of these grand
jury materials, and is considering the filing of an Objection to that order under Federal Rule of Civil
Procedure 72(a).

1 the Court to direct the parties to confer regarding deadlines and to present a joint scheduling order or
2 proposals in advance of any Case Management Conference.

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